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Mailed : *2-7-07*  
In re Application of  
Tomsia et al.  
Serial No. 09/845,597  
Filed: April 30, 2001  
For: Glass/Ceramic Coatings for Implants

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: DECISION  
: DISMISSING  
: PETITION  
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This is a decision on the December 07, 2006, "Petition under 37 CFR 1.181(a)(1)" requesting that the denial of applicant's priority claim to 60/201,556 be rescinded.

The petition is before the Director of Technology Center 1700 for consideration.

The petition is **DISMISSED** for the reasons below.

## DECISION

A final Office action was mailed on September 27, 2006, which rejected all the pending claims over a variety of references. The rejections are based at least in part on the examiner's position that the instant application is not entitled to the filing date of the provisional application (60/201,556) from which priority is claimed. Applicant filed the instant petition on December 7, 2006, requesting review of the examiner's denial of this priority claim.

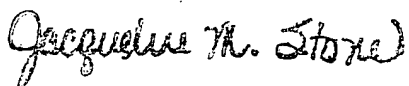
As stated in MPEP 1201, "the line of demarcation between appealable matters for the Board of Patent Appeals and Interferences (Board) and petitionable matters for the Director of the U.S. Patent and Trademark Office (Director) should be carefully observed." The MPEP (1201) explains:

The United States Patent and Trademark Office (Office) in administering the Patent Laws makes many decisions of a substantive nature which the applicant may feel deny him or her the patent protection to which he or she is entitled. The differences of opinion on such matters can be justly resolved only by prescribing and following judicial procedures. *Where the differences of opinion concern the denial of patent claims because of prior art or other patentability issues, the questions thereby raised are said to relate to the merits*, and appeal procedure within the Office and to the courts has long been provided by statute (35 U.S.C. 134).

The Board will not ordinarily hear a question that should be decided by the Director on petition, and the Director will not ordinarily entertain a petition where the question presented is matter appealable to the Board

In the instant case, the examiner's denial of applicant's priority claim leads directly to the resulting denial of the pending patent claims over the prior art. The matter is thus squarely within the purview of the Board.

As the matter raised by petitioner is essentially a patentability issue within the jurisdiction of the Board, the instant petition is necessarily **DISMISSED** as directed to an appealable matter.



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Jacqueline M. Stone, Director  
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